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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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9 SERGIO IVAN GUTIERREZ,

10 Plaintiff, No. C 08-00247 JSW

11 v.

12 OPTION ONE MORTGAGE,

13 Defendant.

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15 ORDER DENYING
16 APPLICATION TO PROCEED IN
17 FORMA PAUPERIS AND
18 DISMISSING COMPLAINT

19 On January 14, 2008, Plaintiff Sergio Ivan Gutierrez filed a complaint and an
20 application to proceed *in forma pauperis*. Courts must deny *in forma pauperis* applications
21 under certain circumstances, including when the allegation of poverty is untrue or the
22 underlying complaint sought to be filed is frivolous or when it fails to state a claim upon which
23 relief may be granted. 28 U.S.C. § 1915(e)(2).

24 First, the Court finds that Plaintiff's claim of poverty is untrue. Plaintiff maintains a job
25 with a large enough salary and owns two cars and a valuable home. The claim of poverty is
26 unconvincing. On this basis alone, the application to proceed *in forma pauperis* is DENIED.

27 In addition, in contravention of Federal Rule of Civil Procedure 8(a), Plaintiff failed to
28 file a pleading setting forth the grounds upon which this Court has jurisdiction, "a short and
plain statement of the claim showing that the pleader is entitled to relief, . . . and a demand for
judgment for the relief the pleader seeks." Plaintiff's complaint is disjointed to the point of
being incoherent and unintelligible. It is impossible to discern from his complaint: (1) the
underlying factual basis for his suit; (2) the legal theories under which he seeks relief; or (3)

United States District Court

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1 what relief he is requesting. The Court cannot discern the basis of the complaint or the claim
2 for jurisdiction. There is some allusion to admiralty law which falls under federal jurisdiction,
3 but the allegations maintain that Plaintiff's body is a vessel and therefore that admiralty law
4 applies. This is unsupported by law.

5 For these reasons, Plaintiff's application to proceed *in forma pauperis* is HEREBY
6 DENIED WITHOUT PREJUDICE and the Complaint is DISMISSED WITH LEAVE TO
7 AMEND. If Plaintiff wishes to pursue this action, he must file an amended complaint setting
8 forth a cognizable legal claim by **February 8, 2008**. Plaintiff may not file another application
9 to proceed *in forma pauperis* as the Court finds his claim of poverty to be untrue. Failure to file
10 a cognizable legal claim by this date shall result in **dismissal** of this action. The Court advises
11 Plaintiff that a Handbook for Pro Se Litigants, which contains helpful information about
12 proceeding without an attorney, is available through the Court's website or in the Clerk's office.

13 In light of this Order, the date for the Case Management Conference, previously set for
14 April 28, 2008 at 1:30 p.m., is VACATED and will be reset by the Court at a later date if
15 necessary.

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17 **IT IS SO ORDERED.**

18 Dated: January 16, 2008


19 JEFFREY S. WHITE
20 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

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5 SERGIO IVAN GUTIERREZ,

6 Case Number: CV08-00247 JSW

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.

9 OPTION ONE MORTGAGE et al,

10 Defendant.
11 _____ /

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
13 District Court, Northern District of California.

14 That on January 16, 2008, I SERVED a true and correct copy(ies) of the attached, by
15 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
16 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
17 inter-office delivery receptacle located in the Clerk's office.

18 Sergio Ivan Gutierrez
c/o 342 Athens Street
San Francisco, CA 94111

19 Dated: January 16, 2008


20 Richard W. Wiking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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